

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 1317 OF 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VALLABHBHAI C SARVAIYA

VERSUS

COMPETENT AUTHORITY (ULC) RAJKOT

Appearance:

MR JR NANAVATI for the Petitioner

MS MANISHA LAVKUMAR AGP for the Respondent No.1

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 25/07/2000

C A V JUDGMENT

#. Heard learned counsel for the parties.

#. This matter arises under the provision of ULC Act. The respondent No.3 filled in the form under Subsection (1) of Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976, which was registered as ULC Case No. 3244 of 1976. In this form the respondent No.3 disclosed that the possessed land admeasuring 17880 Sq. Mtrs. The respondent No.1 issued draft statement under sub-section (3) of Section 8 of the aforesaid Act and served the same together with the notice upon the respondent No.3 on 12.10.1982. The respondent No.3 filed reply to the same on 30.11.1982. The respondent No.1 issued final statement and declared 15984.21 Sq. Mtrs. of the lands as surplus under its order dated 15.5.1984. It is not in dispute that the plot No.25 admeasuring 334.45 Sq. Mtrs. is included in the surplus holding of the respondent No.3. The respondent No.3 by the registered document bearing No.961 dated 7.2.1986 sold the same to respondent No.4. The respondent No.4 as per the case of the petitioner has constructed a house on this part of surplus land vide registered deed dated 25.7.86 sold the land with house to the petitioner. It is the case of the petitioner that the notice under sub-section (5) of Section 10 of the Act was not served upon the petitioner.

#. The learned counsel for the petitioner during the course of arguments admitted that the possession of the surplus land has been taken by the respondent No.1 except the physical possession of the house.

#. The petitioner filed an appeal against the order dated 15.5.1984 of the competent authority before the respondent No.2. The appeal was held to be barred by time and further that the form filled in by the respondent No.3 under sub-section (1) of section 6 of the Act do not disclose the interest of the petitioner. Hence this Special Civil Application.

#. During the course of the arguments, the learned counsel for the petitioner further admitted that he is not in possession of the house but tenant is there. It is not the case of the petitioner that this tenant has been inducted by the petitioner. On the contrary the learned counsel for the petitioner admitted that this tenant was there in the house when he purchased the same from respondent No.3. On being put by the court the learned counsel for the petitioner admits that the tenant has not attorned in favour of the petitioner.

#. Reply to the Special Civil Application has been filed

by the State Government and therefrom, I find that the possession of the land has been taken. This house is the part of the surplus land admeasuring 15984.21 Sq. Mt.

#. The learned counsel the petitioner contended that the possession of that house was not taken and as a result thereof this Special Civil Application is abated under the Repeal Act. I do not find any merits in this contention. The learned counsel for the petitioner has not produced any evidence on the record of the Special Civil Application to show and establish that the possession of the land and house was not taken. Admittedly the tenant was in possession and he was the best person to state whether the possession was taken or not. The petitioner even has not cared to file affidavit of the tenant on the record. In view of this fact it is to be accepted as what it is stated by the respondent in the reply that the possession of the land and house thereof was taken on 30.12.1987 i.e. much before the date on which the Act has been repealed. I find from the reply to the Special Civil Application that a notice under Section 10(3) of the Act has been issued on 16.9.1987, which has been published in the Government Gazette. This land vested in the government and no right, title remain in the hands of the petitioner. A notice under Section 10(5) of the Act has been issued on 10.11.1987 and which has been served upon the petitioner. Though the learned counsel for the petitioner is contending that notice under Section 10(5) of the Act was not served upon the petitioner but it is difficult to accept. The case of the respondent is that this notice has been served upon the petitioner and this fact has not been denied by the petitioner in rejoinder. The petitioner has purchased the land and the house after the matter has been decided by the competent authority. Once this land was declared surplus land this purchase thereof made by the petitioner is wholly illegal. The petitioner could not have purchased this land. He has purchased this land knowing this fact that an order has already been passed by the competent authority declaring it surplus land. Moreover, the petitioner is not in possession of the land and house and the person, who is in possession of the land and house is not making any grievance. It is a case where the petitioner has made an attempt to frustrate the beneficial provisions of this Act.

#. In the facts of this case rightly the appellate authority has not granted any relief to the petitioner. The appeal was barred by limitation. Otherwise also the

petitioner has no interest and in the declaration form filed in under Section 6 his name has not been mentioned. The proceedings have been reached to the stage of Section 10(5) and 10(6) of the Act. The original holder of the land is also not challenged the order dated 15.4.94.

In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted stands vacated. The petitioner is directed to pay Rs.500/= towards costs of the petition to the respondent No.1.

(S.K.Keshote, J.)

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